

JUDGE COTE

07 CV 6294

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----		X
CORBIS CORPORATION,	:	Case No. _____ Civ. _____ ()
	:	
Plaintiff,	:	COMPLAINT FOR COPYRIGHT
	:	INFRINGEMENT AND VIOLATION
-against-	:	OF THE DIGITAL MILLENNIUM
	:	COPYRIGHT ACT
NIIT LIMITED, an Indian corporation, and	:	
NIIT (USA), INC., a Georgia corporation,	:	DEMAND FOR JURY TRIAL
	:	
Defendants.	X	

JUL 09 2007

U.S.D.C. S.D.N.Y.
CASHIERS

Plaintiff Corbis Corporation ("Corbis"), through its attorneys, complaining of NIIT Limited and NIIT (USA), Inc. (collectively "NIIT") alleges as follows:

INTRODUCTION

1. Corbis is a leading visual-solutions provider, licensing images that enable publishers, advertising and design agencies, filmmakers, and other creative professionals to tell their stories with impact extending beyond words. Recently, at least six images from the Corbis collections were misappropriated, and used in at least twelve instances, without license or permission—contrary to the rights of Corbis and of the photographers that Corbis represents. Such images were reproduced, displayed, transmitted, and otherwise misused—in pursuit of profit—on Defendants' website without any payment of compensation to Corbis for their use. Because NIIT has failed to satisfactorily respond to Corbis' good-faith demand, further attempts to informally resolve this dispute are futile, and Corbis files this action for (i) copyright infringement under 17 U.S.C. § 501, *et seq.* and (ii) violation of the Digital Millennium Copyright Act ("DMCA") under 17 U.S.C. § 1201, *et seq.*

JURISDICTION AND VENUE

2. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C., §§ 1331 (federal question) and 1338 (copyright), as this action involves claims brought under federal law and the United States Copyright Act, 17 U.S.C. §§ 101, *et seq.* NIIT is subject to personal jurisdiction in that, upon information and belief, it solicits and conducts business in and within this jurisdiction. In addition, NIIT is subject to personal jurisdiction in this District under the valid and binding forum selection clause in Corbis' Site Usage Agreement and the Corbis Content License Agreement, under which NIIT and/or its agent(s) agreed to accept the exclusive jurisdiction of this Court as quoted below.

3. Under 28 U.S.C. § 1400(a), venue in this Court is proper under the valid and binding forum selection clause in Corbis' Site Usage Agreement and the Corbis Content License Agreement, under which NIIT and/or its agent(s) agreed to accept the exclusive jurisdiction of this Court as quoted below. In addition, upon information and belief, NIIT actively solicits and conducts business in this District. Further, NIIT's infringing display of the Corbis images occurred, in part, in this District.

PARTIES

4. Corbis is a Washington corporation with a principal place of business at 710 2nd Avenue, Suite 200, Seattle Washington. Corbis also has a place of business located at 902 Broadway, New York, NY.

5. Upon information and belief, NIIT Limited is an Indian corporation with a principal place of business located at 85, Sector 32, Institutional, Gurgaon 122001, India. Upon information and belief, NIIT Limited solicits and conducts business in the United States, both directly and through its subsidiaries. In addition, upon information and belief, NIIT Limited has

undertaken the infringing acts complained of herein in the United States and displays its website, which contains unlicensed Corbis images, in the United States.

6. Upon information and belief, NIIT (USA), Inc. is a Georgia corporation with a principal place of business located at 1050 Crown Pointe Parkway, Suite 500, Atlanta, Georgia. Upon information and belief, NIIT (USA), Inc. is a wholly owned subsidiary of NIIT Limited.

BACKGROUND

7. Corbis is in the business of licensing photographs and fine art images on behalf of itself and the photographers and other licensors it represents. Corbis offers a preeminent collection of more than 100 million creative, entertainment and historic images and serves more than 50 countries worldwide. Generally, the images in Corbis' collections were taken by professional photographers who earn most or all of their livelihoods from the licensing fees Corbis is able to obtain for their images. Corbis' collections highlight well-known photographers and some of the most recognized images in contemporary society, including cutting-edge contemporary creative imagery, and images from cultural institutions, museums and photojournalists. Its customers include thousands of leading print, interactive and broadcast advertising agencies, direct marketing agencies, corporations, small and medium sized businesses, publishers and media companies.

8. The images in Corbis' collections are the subject of copyright protection under the laws of the United States. Corbis has protected the images in its collections and the images which are the subject of this action by systematically registering the copyrights thereto.

9. Corbis owns and operates a website located at the Internet address www.corbis.com ("Corbis Website"). At the Corbis Website, users are able to search hundreds

of thousands of images from Corbis' collection and then pay to license the images for specific commercial uses.

10. Access to the Corbis Website is governed by Corbis' Site Usage Agreement available to all visitors on the Corbis Website. The Site Usage Agreement states in relevant part, "[a]ny dispute regarding this Agreement shall be governed by the laws of the State of New York and applicable U.S. Federal law, including Title 17 of the U.S. Code, as amended. The parties agree to accept the exclusive jurisdiction of the state and federal courts located in New York, USA."

11. Use of Corbis' images is governed by the Corbis Content Licensing Agreement available to all visitors on the Corbis Website site. Paragraph 21 of the Corbis Content License Agreement expressly provides that "Any dispute regarding this Agreement shall be governed by the laws of the State of New York, and by Titles 15, 17 and 35 of the U.S.C., as amended, and the parties agree to accept the exclusive jurisdiction of the state and federal courts located in New York, New York, regardless of conflicts of laws."

12. Upon information and belief, NIIT owns, operates, and maintains a website located at www.niit.com ("NIIT Website"). The NIIT Website, which is interactive and transmitted nationwide via the Internet, advertises and otherwise offers NIIT's services.

13. Upon information and belief, in or around November 2004 and potentially on various other occasions, NIIT and/or its agents visited the Corbis Website and—without authorization—copied and/or downloaded Corbis images that had previously been registered with the United States Copyright Office.

14. NIIT and/or its agents then copied and/or uploaded Corbis images onto the NIIT Website without authorization and without paying for them.

15. The same Corbis images were reproduced, displayed and distributed to the public on the NIIT Website as part of that site's marketing and advertising material in an effort to attract business.

16. In or around February 2007, Corbis provided written notice advising NIIT of its unauthorized use of the Corbis images. Despite this notice, NIIT continued to publicly display the Corbis images until at least June 15, 2007. At all relevant times hereto, the Defendant publicly displayed the Corbis Images on its Website without license or other authorization from Corbis.

17. Attached as Exhibit A is a representative, non-exhaustive sample of true and correct copies of presently known Corbis images registered with the Copyright Office ("Corbis Images"), with screen shots taken from the NIIT Website depicting some of Defendants' unauthorized uses of the Corbis Images.

18. Attached as Exhibit B is a chart identifying the United States Copyright Office registration certificate numbers and registration dates for the Corbis Images displayed in Exhibit A, evidencing that Corbis owns or controls the registered copyrights to these images that were copied and displayed on the NIIT Website.

FIRST CLAIM FOR RELIEF - COPYRIGHT INFRINGEMENT

19. Corbis repeats and realleges the allegations of Paragraphs 1 through 18 as if fully set forth herein.

20. Corbis holds valid and exclusive registered copyrights to the images that are the subject of this action and that are evidenced by the copyright registration certificates referenced by Exhibit B.

21. NIIT reproduced, distributed, displayed, transmitted, and created derivative works of those images without Corbis' authorization.

22. The actions and conduct of NIIT as described above, directly, contributorily, and/or vicariously infringe the exclusive rights of Corbis granted by Section 106 of the Copyright Act, 17 U.S.C. § 106, to display, reproduce, and distribute the registered copyrighted works to the public.

23. Such actions and conduct by NIIT constitutes copyright infringement under Section 501 of the Copyright Act, 17 U.S.C. § 501.

24. As a result of the copyright infringement described above, Corbis is entitled to relief against NIIT including, but not limited to, injunctive relief, actual damages or statutory damages, statutory costs and attorneys' fees, and prejudgment interest.

SECOND CLAIM FOR RELIEF- DMCA VIOLATION

25. Corbis repeats and realleges the allegations of Paragraphs 1 through 24 as if fully set forth herein.

26. All of the Corbis Images that are the subject of this lawsuit were displayed on the Corbis Website with corresponding copyright management information ("CMI") indicating Corbis' control of rights in such images.

27. Upon information and belief, when NIIT and/or its agents duplicated and displayed the subject images on the NIIT Website, they intentionally removed the CMI from each of the original Corbis images used by NIIT.

28. Upon information and belief, when NIIT and/or its agents distributed and publicly displayed the Corbis Images and copies thereof on the NIIT Website, they knew that

CMI had been removed or altered without authority of Corbis, the entity that controlled the copyrights.

29. NIIT and/or its agents knew or had reasonable grounds to know that the conduct specified in the prior two paragraphs would induce, enable, facilitate or conceal NIIT's infringement of copyrights, as described above.

30. NIIT's conduct therefore constitutes a violation of the Digital Millennium Copyright Act, 17 U.S.C. § 1202(b).

31. As a result of the conduct described above, Corbis is entitled to relief against NIIT, including, without limitation, injunctive relief, actual damages or statutory damages in the amount of up to \$25,000 per violation, statutory costs and attorneys' fees, and prejudgment interest.

RELIEF REQUESTED

WHEREFORE, Corbis prays for relief as follows:

1. For an award of NIIT's profits and for damages in such amount as may be found, or for statutory damages of (a) not less than \$750 or more than \$30,000 per image pursuant to 17 U.S.C. § 504(c)(1) or, upon a finding of willful infringement pursuant to 17 U.S.C. § 504(c)(2), up to \$150,000 per image;

2. For an award of NIIT's profits and for damages in such amount as may be found, or for statutory damages of not less than \$2500 or more than \$25,000 per violation pursuant to 17 U.S.C. § 1203 (c)(3)(B);

3. For an award of costs, pursuant to 17 U.S.C., §§ 505 and 1203(b)(4);

4. For an award of reasonable attorneys' fees, pursuant to 17 U.S.C., §§ 505 and 1203(b)(5);

5. For an award of prejudgment interest on the amount of any award to Corbis; and
6. For such other and further relief as the Court deems just and equitable.

JURY TRIAL DEMAND

Plaintiff Corbis hereby requests a trial by jury of all issues so triable.

DATED: July 6, 2007

FENWICK & WEST LLP

By  _____

Kathryn J. Fritz (KF 3995)
FENWICK & WEST LLP
555 California Street, 12th Floor
San Francisco, CA 94104
(415) 875-2300

Attorneys for Plaintiff
CORBIS CORPORATION

23819/00408/LIT/1268047.4